

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

LISA HUNTER, JACOB ZABEL,
JENNIFER OH, JOHN PERSA, GERALDINE
SCHERTZ, and KATHLEEN QUALHEIM,

Plaintiffs,

and

BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS,
and RONALD ZAHN,

Intervenor-Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY,
ANN S. JACOBS, DEAN KNUDSON, ROBERT
F. SPINDELL, JR., and MARK L. THOMSEN, in
their official capacities as members of the
Wisconsin Elections Commission,

Defendants,

and

21-cv-512-jdp-ajs-eec

WISCONSIN LEGISLATURE,

Intervenor-Defendant,

and

CONGRESSMEN GLENN GROTHMAN,
MIKE GALLAGHER, BRYAN STEIL, TOM TIFFANY,
and SCOTT FITZGERALD,

Intervenor-Defendants,

and

GOVERNOR TONY EVERS,

Intervenor-Defendant.

BLACK LEADERS ORGANIZING FOR
COMMUNITIES, VOCES DE LA FRONTERA,
the LEAGUE OF WOMEN VOTERS OF
WISCONSIN, CINDY FALLONA, LAUREN
STEPHENSON, and REBECCA ALWIN,

Plaintiffs,

v.

MARGE BOSTELMANN, JULIE M. GLANCEY,
ANN S. JACOBS, DEAN KNUDSON, ROBERT
F. SPINDELL, JR., and MARK L. THOMSEN, in
their official capacities as members of the
Wisconsin Elections Commission, and
MEAGAN WOLFE, in her official capacity as the
administrator of the Wisconsin Elections Commission,

21-cv-534-jdp-ajs-eec

Defendants.

**JOHNSON INTERVENOR-PLAINTIFFS' OPPOSITION TO THE
CONGRESSMEN INTERVENOR-DEFENDANTS' MOTION TO DISMISS**

Intervenor-Defendants Congressmen Glenn Grothman, Mike Gallagher, Bryan Steil, Tom Tiffany, and Scott Fitzgerald have moved to dismiss the Johnson Intervenor-Plaintiffs' complaint for lack of subject matter jurisdiction and failure to state a claim. ECF No. 105:2. That motion should be denied.

The Johnson Intervenor-Plaintiffs are Wisconsin voters who live in malapportioned districts and who intervened in this case to protect their rights to an undiluted vote and to the state forum in which they have chosen to lodge their own redistricting complaint. The Congressmen argue that the Johnson Intervenor-Plaintiffs' complaint should be dismissed under *Grove v. Emison* 507 U.S. 25 (1993) and the abstention doctrine of *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). ECF No. 105:3.

The Congressmen made the same set of arguments in an earlier motion to dismiss the Hunter Plaintiffs' complaint, *see* ECF No. 30-2, 30-3, a motion which this Court denied, *see* ECF No. 60:9. The Congressmen have provided no reason why, if the other complaints in this suit are not dismissed, the Johnson Intervenor-Plaintiffs' complaint should be, thereby denying the Intervenor-Plaintiffs the ability to protect their interests while this federal litigation proceeds.

The Congressmen point out that, since this Court denied their motion to dismiss, the Wisconsin Supreme Court has assumed jurisdiction of the Johnson Intervenor-Plaintiffs' original action. But in response to the Wisconsin Supreme Court's decision, this Court stayed federal proceedings through November 5, 2021. *See* ECF No. 103.

On November 5, unless all three branches of state government have affirmatively demonstrated that they cannot or will not undertake the creation of a new set of district maps, this Court should either continue to stay this case or should dismiss it. But it should treat the claims of the Plaintiffs and the Intervenor-Plaintiffs equally. *See, e.g.*, ECF No. 91:1 (Congressmen's statement that the Wisconsin Supreme Court's decision to accept jurisdiction of a redistricting case means this entire federal case should be dismissed).

Dated this 19th day of October, 2021.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY
Attorneys for Intervenor-Plaintiffs

/s/ *Anthony LoCoco*

Richard M. Esenberg, WI Bar No. 1005622

414-727-6367; rick@will-law.org

Anthony LoCoco, WI Bar No. 1101773

414-727-7419; alococo@will-law.org

Lucas Vebber, WI Bar No. 1067543

414-727-7415; lucas@will-law.org

330 East Kilbourn Ave. Suite 725

Milwaukee, WI 53202

414-727-9455; FAX: 414-727-6385